IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :: 02-08-2007

CORAM

THE HONOURABLE MR.JUSTICE ELIPE DHARMA RAO

AND

THE HONOURABLE MR.JUSTICE S.PALANIVELU

WRIT APPEAL No.3431 OF 2003

Shri D.Raja ... Appellant

-vs-

1.The Presiding Officer,
Industrial Tribunal,
Chennai.

2.The Management of
Indian Overseas Bank,
rep.by its Chairman and
Managing Director,
762, Anna Salai,
Chennai-600 002. ... Respondents

Appeal against the order, dated 04.03.2003, made in W.P.No.12264 of 1999 on the file of this Court. Writ Petition filed under Article 226 of the constitution of India to call for the records of the first respondent in connection with the award dated 9.11.98 passed in I.D.No.158 of 1994 and quash the same and consequently direct the second respondent Management to reinstate the petitioner in service with backwages and all other attendant benefits.

For appellant : Mr.V.Prakash,
Sr.Counsel for Mr.P.Chandrasekaran

For respondent No.2 : Mr.N.G.R.Prasad

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J U D G M E N T

S.PALANIVELU,J.

This Writ Appeal is directed against the order of a learned single Judge of this Court, made in W.P.No.12264 of 1999,

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whereby the dismissal of the appellant from service was confirmed.

2. The facts, which led to the filing of this Writ Appeal, are as follows :

2.1. Appellant was appointed in Indian Overseas Bank on 25.06.1979 as a Shroff/Godown Keeper in N.N.Kandigai Branch and continued to serve as a permanent employee till his date of dismissal on 31.08.1987.

2.2. On 01.03.1986, one Nagaratnam, an account holder of the said bank, came to him and handed over Rs.45,000/-, asking him to credit Rs.40,000/- to his S.B.Account No.189 and also to S.B.Account No.2 of his brother, under a premise that he gave Rs.40,000/- to the appellant. After Nagaratnam left the counter, the appellant found Rs.45,000/-, however, as per the request of the said Nagaratnam, he credited Rs.40,000/- to both the accounts. He prepared two challans, one for Rs.25,000/- for Account No.189 and the other for Rs.15,000/- towards Account No.2. At about 10.00 p.m. on the same day, one Gajendra Naidu, brother of Nagaratnam, went to the residence of one Rama Govindan, a co-employee of the appellant, and asked about the crediting of Rs.40,000/- alone in the bank account, for which he responded that he knew nothing. So, both of them immediately went to the house of one Babu, another staffer of the bank, and, on a query, he informed that in both the accounts, Rs.25,000/- and Rs.15,000/- respectively were credited. Thereafter, all of them went to the residence of the appellant and asked him about the remaining Rs.5,000/-, for which he stated that he kept the said amount of Rs.5,000/- in his table drawer and he would return the amount. Subsequently, they left for their houses. However, one Govindasamy Naidu, another brother of Nagaratnam, went to the house of the appellant at 03.00 a.m. on 02.03.1986 and told him that money was urgently needed for him, for which he would bring the Branch Manager from Tiruttani. Then, the appellant replied that there was no need to bring the Branch Manager and he was having money with him in the house and, so saying, he paid Rs.5,000/- to him.

2.3. On 07.03.1986, Regional Manager of the bank, Vellore, held an inquiry with regard to the incident in N.N.Kandigai Branch and gave a report, after examining all the persons concerned.

2.4. Thereafter, on 05.05.1986, the bank slapped a letter, chargesheeting and suspending the appellant in a single proceeding, stating that he was guilty of misconduct in terms of para 17.5 (d) and 17.5 (j) of the Bipartite settlement, dated 14.12.1966, between the bank and its workmen. The said paras go thus :

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"17.5 (d) wilful damage or attempt to cause damage to the property of the bank or any of its customers.

17.5 (j) doing any act prejudicial to the interests of the bank, or gross negligence or negligence involving or likely to involve the bank in serious loss."

2.5. Appellant was required to submit his explanation in ten days. For the said charge sheet, the appellant submitted an explanation on 13.05.1986, totally denying the charges, stating that cash was tallied that day and the incident, as alleged, had not taken place and that the charge sheet should have been the product of some allegations concocted against him, because he belonged to a depressed class.

2.6. Not content with the explanation submitted by the appellant, the management ordered a domestic inquiry. Thereafter, the enquiry officer conducted an inquiry and came out with his finding on 25.05.1987, holding that the charges levelled against the appellant, except filling up of challans relating to S.B.Account of P.Gajendra Naidu, have been fully established. Thereupon, the management, on 26.05.1987, shot a second show cause notice on the appellant, calling upon him to show cause as to why he should not be dismissed from service. For the said show cause notice, the defence representative by name Nagappan, who was representing the appellant before the enquiry officer, gave a reply on 05.08.1987. The appellant was given a personal hearing and examined on 14.08.1987 and, thereafter, the management dismissed the appellant from service, by means of proceedings, dated 31.08.1987.

2.7. Then, the appellant raised an industrial dispute in I.D.No.158 of 1994 before the Industrial Tribunal, Madras. After due inquiry, the said Tribunal rejected the claim of the appellant, confirming the penalty of dismissal. Aggrieved over the said order, he preferred a writ petition before this Court and the said writ petition was also dismissed by a learned single Judge. Hence, this appeal.

3. One significant aspect to be borne in mind here is, learned counsel for the appellant before the Tribunal made an endorsement on 29.01.1998 to the effect that "claimant is only attacking the finding and the evidence and not the fairness of the inquiry." Hence, there was no need for the Tribunal and the learned single Judge to discuss the conduct of the inquiry.

4. In order to appreciate the rival contentions of both

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sides, it becomes necessary for this Court to highlight certain features of the incident. The fairness of the inquiry need not be subjected for consideration. There is no re-appraisal of the evidence on record. Concedingly, Nagaratnam, handed over Rs.45,000/- to the appellant and he credited only Rs.40,000/- towards two S.B.Accounts as per his request and retained Rs.5,000/-, which was returned back to the brother of Nagaratnam on the next day.

5. The management raised a stiff opposition against the bona fides of the conduct of the appellant, by stating that had he been honest enough, he might have immediately informed the Branch Manager about the balance of Rs.5,000/-, which he had retained with him or he might have deposited the amount into sundry account of the bank, for refunding it to the account holder on the next day, but, neither of the courses was adopted by him, which shows that with a *mala fide* intention of misappropriating the amount, the appellant took the amount to his house.

6. The above said contention was denied by the appellant, stating that he was away with the Manager from 01.30 p.m. on 01.03.1986 and returned back only by night at 09.30 p.m. It was also contended by the management that since the workman/appellant was with the Branch Manager all the time, he could have informed the manager about the said transaction.

7. It was the explanation of the appellant that since Nagaratnam was a reputed customer of the bank, he thought it fit to directly pay back the amount to him either on the same day or the next day; there was no need to inform the Branch Manager in that regard and that if the amount was kept in sundry account of the bank, there might be some procedural delay in getting and paying back the amount to Nagaratnam.

8. A perusal of the records, particularly, the over-writings on the reverse of the paying-in-challan, which the appellant prepared on 01.03.1986 for Account No.2, would indicate the dishonest intention on his part. On the front side of the said challan, there were no over-writings or inter-lineations, but on rear side, it is seen that the number of currencies has been altered from 190 x 100 = 19,000/- to 140 x 100 = 14,000 and 20 x 50 =1,000. Subsequently, the figure 190 was scored out and the figure 140 was written and, by altering the number of currency notes, Rs.5,000/- was kept back. Further, on a previous occasion also, the appellant credited excess cash of Rs.100/- to sundry account, for which he was issued a memo, seeking for explanation as to how the said sum of Rs.100/- was in excess.

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9. Before the enquiry officer, Nagaratnam was not examined and the appellant also did not appear as a witness. The explanations adduced by the appellant in cross-examination of the management witnesses were not accepted by the enquiry officer. It is not in dispute that the particulars regarding denominations and number of currencies were written by the appellant. The explanation on this point does not convince this Court.

10. The management, which is a bank engaged in business of money transactions, must account for the same, with regard to each and every rupee. It was not the personal money transaction between the appellant and Nagaratnam, but, purely an official one. Though the customer left the place after handing over money to the cashier under the impression that he gave Rs.40,000/- alone to him, it was incumbent upon the cashier, namely, appellant to inform the discrepancy immediately to the Branch Manager and keep the amount in sundry account and reimburse the same, after securing the customer, which was not done. In other words, there was a classical dereliction of duty on the part of the appellant. Had he been fair enough, there was another opportunity for him to inform the transaction to the Branch Manager, since he was with him from 01.30 p.m. up to 09.30 p.m. on that day. Another circumstance to be noted is, the appellant had taken the amount to his house and paid it to the brother of Nagaratnam. Even though he alleged that the money was kept in table drawer of the bank, it was not properly explained before the enquiry officer nor did he inform his co-employees about the retaining of Rs.5,000/-. It goes without saying, that the cashier holds an important duty of keeping cash of the bank carefully and accounting it to the superiors, which the appellant has miserably failed to do.

11. The learned single Judge, after considering all the aspects, reached a conclusion that it cannot be said that the management has decided to punish the petitioner with dismissal without any evidence. This is not the case of "no evidence" nor the finding of the inquiry is perverse. Therefore, there is no reason to reconsider the finding as to the penalty imposed on the appellant. Hence, we are of the considered view that the punishment of dismissal awarded to the appellant is quite proper and find no reason to interfere with the concurrent findings of the Tribunal and the learned single Judge, since they were passed on proper consideration.

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12. Writ Appeal is devoid of merit. Hence, it suffers dismissal and is dismissed. No costs.

Sd/
Asst.Registrar

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Sub Asst.Registrar

dixit

To

The Presiding Officer,
Industrial Tribunal,
Chennai.

+1cc to Mr.P.Chandrasekaran, Advocate Sr 48224
+1cc to Mr.N.G.R.Prasad,Advocate SR 48250

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